

AGENDA: May 27, 2003

5.1

CATEGORY: Public Hearing

DEPT.: Community Development

TITLE: Planned Community/Provisional Use
Permit—228 Castro Street

RECOMMENDATION

Adopt A RESOLUTION APPROVING A PLANNED COMMUNITY/PROVISIONAL USE PERMIT FOR A RESTAURANT WITH MUSIC AND DANCING AT 228 CASTRO STREET, to be read in title only, further reading waived.

FISCAL IMPACT—None.

BACKGROUND AND ANALYSIS

On March 29, 1995, a Planned Community/Provisional Use Permit (Use Permit) was granted to the Rio Grande to operate a restaurant with music and dancing at 228 Castro Street. In January 2000, the business was sold and converted to a nightclub without the required modification to the Use Permit (or new permit) and no longer served food. The business was sold again in January 2002 and transferred to the current owners, Messrs. Andrew and Kareem Nahas (the "Operators").

Condition No. 9 of the Use Permit required periodic review of the permit and on October 9, 2002, the Zoning Administrator held a public hearing consistent with that requirement and reviewed the conditions of approval for this facility. The Operators had not been operating the facility as a restaurant and admitted patrons under the age of 21, both in violation of the Use Permit. The Operators appeared at the hearing and indicated that although they had operated as a nightclub, rather than a restaurant with music club, they were only open for business three (3) nights per week. Revised operating conditions were developed consistent with those representations. The Zoning Administrator's decision also set a three-month follow-up public hearing to review the status of the operation, specifically, whether the imposed mitigation measures were reducing the impacts associated with the operation on the residential neighbors.

On November 4, 2002, the business owners filed an appeal of the revised conditions of approval, specifically: (1) the condition to restrict patrons to 21 years of age and older; (2) the restriction of no "in-and-out" privileges; and (3) the hours and days of operation of Thursday, Friday and Saturday from 11:00 a.m. to 2:00 a.m. (Attachment 1).

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On December 10, 2002, the Council held a public hearing on the appeal and upheld the Zoning Administrator's decision with a change to allow in-and-out privileges only on Castro Street. At the public hearing, it was clear that while the Operators had the proper State liquor license to operate a restaurant with music club (a Type 47 license), they did not have the proper license to operate a nightclub (a Type 48 license). As part of that action, Council directed that the item return to Council following the Department of Alcoholic Beverage Control's (ABC) determination on the liquor license to review: (1) the impact of the ABC's decision on the operation of the business and the conditions placed on it by the City; and (2) to develop, together with the City's Youth Advisory Group (YAG), alternatives to "Teen Night" (Attachment 2). The need for this follow-up review by the Council was eliminated by the applicant by virtue of the filing of a new application for a Use Permit which proposes a different use/operation for the facility. The conditions approved by the City Council on December 10, 2002 were effective immediately. The "Background Report," Attachment 10, details the interaction between staff and The Limelight in the interim between December 10, 2002 and today.

On January 22, 2003, Andrew Nahas requested that a scheduled public review of the permit by the Zoning Administrator be continued as the owners were in negotiations to sell the facility.

On March 21, 2003, staff received a new application from Harry Avanesian to operate the facility as a music/dance club seven days a week for patrons 18 years and older and to reopen the restaurant to serve lunch and dinner. The applicant proposed to reconfigure the interior of the facility with only one bar located on the uppermost level, accessible only to patrons 21 years of age and older (considered a split facility by the ABC). The lower levels would have food service and dancing (Attachment 3).

On May 5, 2003, staff received a revision to the application. Mr. Avanesian has withdrawn from the application, and the current owners, Messrs. Andrew and Kareem Nahas, wish to pursue the permit (Attachment 4). Therefore, there is no new operator proposed for this project. Although The Limelight will continue to be managed by the current operators, the application being reviewed by the Council is different than the December 10, 2002 permit. This application includes additional nights of operation for persons over 18 years of age and includes the operation of a full restaurant.

ANALYSIS

On April 9, 2003, the Zoning Administrator held a public hearing on the new application. Four persons from the public, including: one business owner, one business manager, the chair of the Central Business Association (CBA) and the president of the Old Mountain View Neighborhood Association (OMVNA), spoke about problems associated with the club

(Attachment 5). Staff was also presented with a petition, signed by 24 downtown businesses, stating problems with disturbances from The Limelight customers and that the atmosphere the club creates does not promote a family-friendly environment (Attachment 6). In addition, staff received several other e-mails and phone calls noting problems with the facility.

After Council's action in December, the current owners continued to operate their club as a nightclub admitting underage patrons and have not abided by all of the conditions of approval. The club is regularly open to persons 18 years of age and older, and the club has been open on additional nights per week, including Sunday nights for Teen Night. In addition, there has been no installation of sound attenuation measures to help reduce the noise from the facility. Beginning in mid- to late March, the club reduced operations primarily to three (3) nights per week; however, it continued to admit patrons under the age of 21.

There continue to be calls for Police services. The police records for this club from July 2002 to present are included as Attachment 7. Since the Council review of this project in December 2002, there have been several significant incidents involving The Limelight. On one Sunday Teen Night, mutual aid was required from several neighboring cities as well as police dogs to clear the streets and a separate incident involved gun shots fired at the rear of the club at closing. The Police Department continues to note that the disturbances are from The Limelight patrons under the age of 21 who drink in their cars either within the parking lot or on surrounding residential streets.

Staff has reviewed this application with the ABC. Based on ABC's criteria, a bona fide eating establishment, where at least 50 percent of the revenue comes from food sales on a daily basis, is an acceptable business arrangement to retain the existing Type 47 liquor license that allows for persons under the age of 21. In addition, the proposed separate bar area (split facility) is seen as an improvement to the current mixing of ages and alcohol sales. ABC is continuing their enforcement action on the current business owners for past violations.

Conditions of approval

Staff's proposed conditions of approval are a blend of the applicants' desire for a music/dance club and the City's desire to bring the facility into alignment with the goals and objectives of the Downtown Precise Plan. The development strategy for this area of the Downtown Precise Plan is the enhancement of Castro Street as an active pedestrian spine with continuous active retail and restaurant uses. One objective of the Plan is to coordinate activities to achieve a balance between residential, office and retail activities. Provisional uses are allowed only if they can demonstrate that they will generate pedestrian activity and street-side interest compatible with the desired Castro Street environment. When originally approved in 1995, the facility was meant to be a restaurant with music and dancing.

Therefore, staff is recommending the Council approve the project with the following conditions to bring the desired balance of uses and activities (Attachment 9):

- Require the restaurant to be open everyday that the music/dance club is in operation and allow the restaurant to be open seven days a week serving lunch and dinner closing at 11:00 p.m. A complete floor plan and menu to be provided to ensure that adequate food service is proposed.
- Limit the music/dance club to Thursday, Friday and Saturday nights.
- Limit the patrons of the music/dance club to 21 and over but allow people of any age in the restaurant.
- Close the music/dance club at 1:00 a.m. to provide a staggered closing hour from other bars within the area so that the Police Department has more staffing resources to handle the large crowds leaving the facility.
- Annual meetings between the owners and OMVNA and any other interested parties to address any outstanding concerns from the neighborhood.
- Monthly meetings between the owners and the Police Department.
- All neighbors within 500' provided the name and direct phone number of the club's manager in order to immediately handle any issues that may arise.
- All other conditions of approval are the same from the December 2002 approval.

Teen Activities

At the Council's December 10 meeting, Council asked staff to return with alternatives for teen activities should there no longer be Teen Night held at The Limelight. Staff consulted with YAG regarding activities for teens. YAG noted that Teen Nights at The Limelight target more teens from around the Bay Area than from Mountain View. Alternative school- or city-sponsored events do not create the same club atmosphere and would not draw many local teens. Local teens who want a club environment are more likely to go to clubs in surrounding cities.

YAG members are currently working on creating or cohosting with Sunnyvale "band nights" where local high-school students would either compete or have open play. This program is unique to the area, and YAG feels would draw local youth to the event. Other ideas include dances with neighboring high schools as well as other events at the Teen Zone in the Library.

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All of these ideas are being reviewed by the City's Recreation Division and the Youth Resources Manager for their feasibility and cost. In addition, the Teen Center has periodic DJ nights on Friday and Saturday nights for middle-school students.

CONCLUSION

Since the conversion of the club from the Rio Grande to The Limelight, staff has met with the neighbors, downtown business owners, CBA and the club owners to minimize disturbances from the club. In December 2002, the City imposed conditions of approval on the club that have not changed current business operations. At the most recent public hearing, downtown business owners submitted a petition regarding the negative impacts on local business from the facility. Residents continue to feel that the club detracts from a safe, family-oriented downtown. The conditions recommended by the Zoning Administrator would help bring this facility into compliance with the goals and objectives of the downtown and would help to better distribute Police resources to handle the large capacity of the facility.

ALTERNATIVES:

1. The Council can modify, add or delete any of the recommended conditions of approval.
2. The Council can act to have this item return to the Council for further review in a specified time frame.
3. The Council can act to deny the application. However, the conditions from December 10, 2002 would still be applicable.

PUBLIC NOTICING—Agenda posting.

Prepared by:

Approved by:

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City Manager

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Attachments: 1. December 10, 2002 Staff Report
2. December 10, 2002 Minutes
3. Application
4. May 5, 2003 Application Amendment
5. April 9, 2003 Zoning Administrator Minutes
6. Petition and Public Testimony
7. Police Calls for Service
8. Resolution
9. Findings
10. Background Report

cc: Messrs. Kareem and Andrew Nahas
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ACM, CDD, PC, PC—Freeberg, PL—Conte, DCDD, EDM, YRM, DZA, SP—Hutar

CITY OF MOUNTAIN VIEW
RESOLUTION NO.
SERIES 2003

A RESOLUTION APPROVING A PLANNED COMMUNITY/PROVISIONAL USE
PERMIT FOR A RESTAURANT WITH MUSIC AND DANCING AT
228 CASTRO STREET

WHEREAS, Application No. 064-03-PCZA was submitted by Harry Avanasian for a Provisional Use Permit to allow a restaurant with music and dancing to operate at 228 Castro Street in the City of Mountain View; and

WHEREAS, the application was amended on May 5, 2003 to withdraw Harry Avanasian from the application and to add Andrew and Kareem Nahas to the application; and

WHEREAS, a restaurant with music and dancing is allowed in the Downtown Precise Plan District with approval of a Provisional Use Permit per Mountain View City Code; and

WHEREAS, a public hearing was held before the Zoning Administrator of the City of Mountain View on April 9, 2003 to consider said application and recommended that the City Council conditionally approve the Provisional Use Permit subject to the findings and conditions of approval in the Findings Report dated May 27, 2003; and

WHEREAS, on May 27, 2003, the City Council held a public hearing on said application and received and considered all evidence presented at said hearing, including the Findings Report from the Zoning Administrator, the staff report on said application and comments from staff and the public;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain View:

A. FINDINGS: The City Council hereby finds as follows:

1. The staff report dated May 27, 2003 and all attachments thereto, together with a copy of the approved minutes of the City Council meeting of May 27, 2003, are incorporated herein by reference.

2. The Zoning Administrator's Findings Report dated May 27, 2003 is incorporated herein by reference.

3. Provisional Use Permit. The City Council hereby finds that the establishment, maintenance and operation of the music and dance club, subject to the conditions noted in the May 27, 2003 Findings Report, will not, under the circumstances of this particular case and subject to the conditions of approval, be detrimental to the health, safety, peace, morals or general welfare of persons residing or working in the neighborhood of said proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the City.

B. DETERMINATION:

1. The application for a Provisional Use Permit from Andrew and Kareem Nahas is hereby granted subject to the applicant's fulfillment of each and all of the conditions which are attached hereto and incorporated herein by reference.

TIME FOR JUDICIAL REVIEW:

The time in which judicial review of this decision must be sought is governed by California Code of Procedure, Section 1094.6, as established by Resolution No. 13850, adopted by the City Council on October 9, 1983.

WMcN/9/RESO

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